

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION**

United States of America,	)	
	)	
Plaintiff,	)	<b>REPORT AND RECOMMENDATION</b>
	)	
vs.	)	
	)	
Joseph Martell,	)	Case No. 4:03-cr-089
	)	
Defendant.	)	
	)	

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On September 1, 2005, the defendant, Joseph Martell was sentenced to 5 months imprisonment followed by a three year period of supervised release for the offense of Possession of Stolen Firearms Which Had Moved in Interstate Commerce in violation of 18 U.S.C. §§ 922(j) and 924(a)(2).

A Petition Requesting Modification of the Conditions or Term of Supervision was filed on September 27, 2005, alleging that Martell “had violated special condition one, which states, the defendant shall abstain from the use of alcohol and any controlled substances or the possession of controlled substances as defined by 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.” (Doc. No.129). Pursuant to the parties agreement, the court entered an order modifying Martell’s conditions of release to include the following:

Martell shall reside at Share House for a period not to exceed ninety (90) days. While at Share House, Martell should be allowed work release, at the probation officer’s discretion, and must follow through with all treatment programming. Also, following discharge from Share House, Martell shall participate in such aftercare programming as may be required by the probation officer.

A second Petition Requesting Modification fo the Conditions or Term of Supervision was filed on January 23, 2006, following Martell's arrest in Fargo on charges of Failure to Disburse a Loud Party, Delivery of Alcohol to a Minor, and Menacing. The petition alleged that Martell had violated the terms and conditions of his supervised release. Specifically, it advised the court that Martell appeared in Fargo Municipal court on January 9, 2006, where he was convicted Noisy Party or Gathering and Refusal/Disburse Noisy Party, fined a total of \$300.00, and sentenced to thirty days in jail with twenty-nine days suspended and credit for time served. It added that Martell's terrorizing charge was referred to Cass County District Court for prosecution. Finally, it alleged that Martell had consumed alcohol on January 8, 2006.

Martell made his initial appearance on the second petition on February 9, 2006. Attorney Richard Henderson was appointed to represent Martell and appeared on Martell's behalf. Assistant U.S. Attorney Cameron Hayden appeared on the government's behalf. At the outset of the hearing, the parties advised the undersigned that they had reached a decision regarding the modification of Martell's supervised release. In addition, Martell advised the undersigned that he was making an appearance in State court on the pending terrorizing charge later that day and that he anticipated a resolution with the month. Thereafter, Martell admitted to having committed the violations of supervised release as alleged in the petition.

The undersigned finds that the admission was made knowingly, voluntarily, and upon advice of counsel and that there is a basis in fact for the violations. Accordingly, the undersigned **RECOMMENDS** a finding that the violations of supervision occurred as charged in the petition.

Pursuant to its agreement with Martell, the government recommended the following: a six (6) month placement at Centre, Inc. in Fargo with work release, a requirement that Martell submit

to a mental health evaluation, that Martell be required to follow through with treatment, and that following his release from Centre, Inc. he continue with aftercare as directed by the Pretrial Services Office.

Having reviewed the record and considered the recommendations of the parties, the undersigned **RECOMMENDS** that the conditions of Martell's supervised release be modified to include the following condition:

Martell is remanded into the third-party custody of Centre, Inc. in Fargo, North Dakota, for a period of six (6) months. While at Centre Inc., Martell should be allowed work release and must follow through with all treatment programming. In addition, Martell shall undergo a mental health evaluation at the Southeast Human Service Center located in Fargo. Following his release from Centre, Inc., Martell shall continue to participate in AA as may be required by the probation officer.

The undersigned further **RECOMMENDS** that all original conditions of supervised release remain in effect and that the order adopting the recommendation indicate that the disposition is contingent upon that there be no finding of a felony with respect to Martell's pending State charges and that the court will have to revisit this matter if Martell is convicted of a felony.

The parties have **WAIVED** their right to object to this Report and Recommendation, so an order and judgment may issue immediately.

Dated this 9th day of February, 2006.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr.

United States Magistrate Judge